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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

DESARAE MARTIN an Individual,

Plaintiff,

vs.

**PRESCOTT VALLEY CHARTER
SCHOOL**, an Arizona corporation; **VENSURE
EMPLOYER SERVICES INC.**, an Arizona
corporation; **NATIONAL PEO PAYROLL
MANAGEMENT COMPANY, LLC**, an
Arizona limited liability company;
**NATIONAL EMPLOYER SERVICES,
LLC**, a foreign limited liability company,

Defendant(s).

Case No.:

COMPLAINT

JURY TRIAL REQUESTED

COMES NOW Desarae Martin, by and through undersigned counsel, for her
Complaint against Prescott Valley Charter School, National PEO Payroll Management
Company LLC, National Employer Services, LLC, and Vensure Employer Services, Inc.,
and alleges as follows:

NATURE OF ACTION

1
2 1. This is an action under Title VII of the Civil Rights Act 1964 (“Title VII”),
3 Arizona Civil Rights Act (“ACRA”), and Arizona Revised Statutes (“ARS”) against
4 Prescott Valley Charter School, National PEO Payroll Management Company LLC, and
5 Vensure Employer Services, Inc., (“Defendants”) for its unlawful employment practices
6 of discrimination based on race, gender, disparate treatment, harassment.

7 2. This action is also brought under Arizona Revised Statutes (“ARS”) against
8 Prescott Valley Charter School, National PEO Payroll Management Company LLC,
9 National Employer Services, LLC, and Vensure Employer Services, Inc., (“Defendants”)
10 for unlawful actions of Defamation and Intention Infliction of Emotional Distress.

JURISDICTION AND VENUE

11
12 3. This Court has jurisdiction over the subject matter and the parties pursuant
13 to 28 U.S.C. § 1331.

14 4. The unlawful employment actions alleged herein were committed in whole
15 or in part within the jurisdiction of the United States District Court for the District of
16 Arizona.

17 5. Venue is proper in this District under 28 U.S.C. § § 1391 (b) and (c) because
18 all or a substantial part of the acts or omissions giving rise to the claims occurred in the
19 state of Arizona.

20 6. Plaintiff, Desarae Martin or (“Plaintiff”), is an individual residing in Prescott
21 Valley, Yavapai County, Arizona.

22 7. Defendant, Prescott Valley Charter School, (“Defendant”), is a Charter
23 School located in Yavapai County, Arizona.¹

24
25 _____
26 ¹ See A.R.S. 15-184.

STATEMENT OF FACTS

19. Plaintiff was employed as shift bus driver for Defendant beginning in August of 2020.

20. During the course of her employment Plaintiff faced discriminatory acts from Defendant.

21. Plaintiff was also falsely accused of untoward behavior.

22. Defendant launched an unwarranted investigation into Plaintiff that was also outside of the proper protocol to be followed as described in Defendant's policy handbook.

23. When Plaintiff continued to defend herself against such wrongful and meritless accusations, Plaintiff was retaliated against by Defendant.

24. Plaintiff was a dependable and skilled employee throughout her employment with Defendant.

25. Plaintiff had never faced any disciplinary action before the retaliatory and discriminatory acts by Defendant that flowed from the false allegations and unwarranted investigation by Defendant.

26. Throughout the course of her employment Plaintiff was praised for the job she did and was even provided monetary raises on three separate occasions.

27. On or about February, 2021, Plaintiff was asked by another employee what Plaintiff said to make another employee upset.

28. Plaintiff had no idea what this employee was talking about.

29. Plaintiff was then informed that another employee had accused Plaintiff of untoward behavior and reported her to the Principal and Superintendent of the school.

30. Plaintiff was severely distressed, scared, and shocked by this turn of events and wanted to ask this other employee what she did.

1 31. Plaintiff believed that this employee was antagonistic towards Plaintiff and
2 held discriminatory views concerning Plaintiff due to her sexual orientation as a member
3 of the LGBTQ community.

4 32. Plaintiff first reached out to the Principal to discuss this matter.

5 33. Both the Superintendent and Principal rebuffed any request or explanation
6 by Plaintiff to understand what she was being accused of and why.

7 34. The Principal and the Superintendent conducted their own investigation and
8 failed to follow the proper protocols described in the School's Policy Manual.

9 35. In addition, none of the investigation or information was channeled through
10 the HR office or handled by the proper authorities as described within the School's Policy
11 Manual.

12 36. The Superintendent and the Principal conducted their own interviews with
13 various employees, disclosing information to other employees that was harmful to plaintiff
14 without justification or explanation.

15 37. Throughout the course of the investigation Plaintiff was kept in the dark, not
16 allowed to voice her perspective, and was at the mercy of this unwarranted and improper
17 investigation by Defendant.

18 38. During a conversation with Plaintiff's supervisors, her supervisors and those
19 conducting the investigation blamed Plaintiff for other employees knowing the specifics
20 of the investigation even though it was other employees discussing the matter.

21 39. Plaintiff purports that the employee who started the accusations was
22 motivated by her ill-will and discriminatory views of plaintiff on the basis of her sexual
23 orientation as member of the LBGTQ community.

24 40. Plaintiff also discovered from other employees that she was believed that the
25 Superintendent harbored ill-will and discriminatory beliefs towards members of the
26 LGBTQ community.

1 41. Plaintiff learned that the Superintendent displayed discriminatory tendencies
2 against other employees in the past.

3 42. Because of this, Plaintiff believed that this investigation and the retaliatory
4 behavior that followed was in response and in-part due to her sexual orientation and
5 membership as part of the LGBTQ community.

6 43. The retaliatory behavior included demoting Plaintiff by changing the
7 structure of her compensation which equated to a lessening of pay.

8 44. Plaintiff was also not allowed in the school building.

9 45. Defendant enlisted other employees to follow Plaintiff around and report
10 back to Defendant on Plaintiff's behaviors and locations.

11 46. Plaintiff was continually singled out and scrutinized over the manner in
12 which Plaintiff conducted her work.

13 47. Other similarly situated employees did not face the same scrutiny, while
14 behaving in the same manner towards their work as Plaintiff.

15 48. Defendant made numerous attempts to access and pressure counselors to
16 disclose information and conversations that were protected.

17 49. Defendant bad mouthed Plaintiff and displayed specific and personal bias
18 against Plaintiff.

19 50. Plaintiff was also eventually terminated and told it was because there was
20 not enough work for her in the upcoming school year.

21 51. Additionally Plaintiff was told she was terminated for "poor performance"
22 but was never provided a proper evaluation or shown any metrics of how her performance
23 was rated.

24 52. However Plaintiff learned this was not the case and that attendance of school
25 children needing bussing was set to increase, directly contradicting the stated basis for the
26 termination of Plaintiff.

**COUNT ONE - DISCRIMINATION ON THE BASIS OF SEXUAL
ORIENTATION (ALL DEFENDANTS)**

53. Plaintiff was subject to a wrongful investigation, conducted outside the prescribed protocol of the Defendant's handbook.

54. The accusations about Plaintiff used by Defendant to investigate were based on the discriminatory views and motivations of other employees.

55. The Superintendent, who opened and conducted the investigation, was believed by Plaintiff to have known discriminatory views towards Plaintiff's sexual orientation as a member of the LGBTQ community.

56. After Plaintiff stood up and defended herself, and that the accusations were false, Defendant began mistreating and discriminating against Plaintiff as retaliation.

57. Plaintiff has suffered from Defendant's discrimination on basis of her sexual orientation as a member of the LGBTQ community

58. Plaintiff has experienced unfair and disparate treatment in comparison to other non-LBGTQ employees of Defendant.

59. Defendant addressed the incident unfairly due to its discrimination against Plaintiff on the basis of her sexual orientation.

60. The acts committed by the Defendant were unlawful employment practices of discrimination in violation of Title VII, 42 U.S.C. § 2000e and A.R.S. § 41-1463.

61. As a direct and proximate result of Defendant's discrimination, Plaintiff has suffered from emotional distress, physical illness, medical expenses, loss of pay, legal fees and etc.

**COUNT TWO - DISPARATE TREATMENT UNDER TITLE VII (ALL
DEFENDANTS)**

1 62. Plaintiff incorporates each and every allegation above as fully set forth
2 herein.

3 63. Defendant addressed several incidents involving Plaintiff unfairly due to its
4 discrimination against Plaintiff on the basis of her sexual orientation.

5 64. Defendant used false accusation(s) from employees who held discriminatory
6 views about Plaintiff's sexual orientation to conduct an unwarranted and improper
7 investigation.

8 65. Plaintiff also learned that one of the two people conducting the investigation
9 also held discriminatory views against Plaintiff due to her sexual orientation.

10 66. Once Plaintiff showed the investigation was false, Defendant began
11 discriminating against her through retaliation by demoting her position, reducing her pay,
12 restricting her access to the school building, and having her followed by other employees,
13 as Plaintiff believes it was Defendant's goal to terminate Plaintiff from her position.

14 67. Defendant also unfairly scrutinized and retaliated against by Plaintiff by
15 "writing her up" under suspicious circumstances.

16 68. Under 42 U.S.C. §2000e-2(a)(1), specifically Section 703(a)(1), prohibits
17 employers from discriminating against employees with respect to "terms, conditions, or
18 privileges of employment, because of their race, color, religion, sex, or national origin.

19 69. Plaintiff was a member of a protected class in that she was a member of the
20 LBGTQ community.

21 70. Defendant became aware of this fact through the course of her employment.

22 71. During her employment with Defendant, Plaintiff was continually and
23 regularly subjected to a hostile work environment based upon her membership in the
24 above-referenced class.

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1 72. Plaintiff was informed on multiple occasions that other employees, including
2 one the Superintendent and Director of Transportation harbored ill-will and discriminatory
3 beliefs towards Plaintiff due to her sexual orientation

4 73. Comments were made to plaintiff throughout the course of her employment
5 and management continually subjected Plaintiff to a hostile work environment based upon
6 her membership in this class.

7 74. Additionally, Plaintiff sought professional medical services that included a
8 licensed therapist.

9 75. After Defendant learned that Plaintiff was speaking to a licensed therapist,
10 Defendant reached out to the therapist and attempted to pressure her into divulging
11 protected information and conversations of Plaintiff.

12 76. When the therapist stated she could not divulge information pertaining to her
13 conversations with Plaintiff, Defendant proceeded to bad mouth Plaintiff and told the
14 Plaintiff not to believe anything she says.

15 77. Defendant treated Plaintiff less favorably than other similarly situated
16 individuals.

17 78. As a direct and proximate result of Bashas' disparate treatment, Plaintiff has
18 suffered from emotional distress, physical illness, medical expenses, loss of pay, legal fees
19 and etc.

20 **COUNT THREE - RETALIATION UNDER TITLE VII (ALL**
21 **DEFENDANTS)**

22 79. Plaintiff incorporates each and every allegation above as fully set forth
23 herein.

24 80. In reporting and defending herself against Defendant's discriminatory
25 treatment as to Plaintiff's sexual orientation, Plaintiff engaged in protected activity.

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1 81. After Plaintiff reported the discriminatory practices to Defendant, Defendant
2 retaliated against her by demoting her role at her job, changing her hours, changing her
3 rate of pay, singling her out for furthering scrutiny, and eventually wrongfully terminating
4 her.

5 82. Defendant also restricted Plaintiff from entering the school building, and
6 directed other employees to follow Plaintiff around and scrutinize her.

7 83. Defendant singled out Plaintiff for the way she proceeded to do her job, while
8 other similarly situated employees faced no criticism.

9 84. Defendant sought to pressure a therapist Plaintiff was seeing, to reveal
10 protected conversations and confidential information stemming from her interactions with
11 Plaintiff.

12 85. When the therapist refused to reveal this protected information, Defendant
13 proceeded to bad mouth Plaintiff, and told the therapist not to believe anything Plaintiff
14 said.

15 86. There is a causal connection established by time relevance between Plaintiff's
16 protected activities and the adverse actions taken by Defendant.

17 87. As a direct and proximate result of Defendant's purposeful retaliation,
18 Plaintiff has suffered from emotional distress, physical illness, medical expenses, loss of
19 pay, legal fees and etc.

20 **COUNT FOUR – DEFAMATION (ALL DEFENDANTS)**

21 88. Plaintiff hereby incorporates by reference all Paragraphs above as though
22 fully set forth herein.

23 89. Defendant defamed Plaintiff when they conducted an unwarranted
24 investigation on her and interviewed several other employees, disclosing information
25 throughout the course of the investigation and unfounded accusations about Plaintiff to
26 her co-workers.

1 90. In Arizona, courts have determined that a defendant has engaged in
2 defamation if they have done the following: (i) made a statement—verbally or in writing—
3 which would tend to adversely affect the plaintiff’s reputation; (ii) which a reasonable
4 reader, listener, or viewer would understand that the statement made referred to the
5 plaintiff; and (iii) communicated the statement to a third party. *Antwerp* 130 Ariz. at 528,
6 637 P.2d at 738; (quoting *Peagler v. Phx. News., Inc.*, 114 Ariz. 309, 315, 560 P.2d 1216,
7 1222 (1977)); see *Dube v. Likins*, 216 Ariz. 406, 417, 167 P.3d 93, 104 (Ariz. Ct. App.
8 2007) (quoting *Rowland v. Union Hills Cntry. Club*, 157 Ariz. 301, 306, 757 P.2d 105,
9 110 (Ariz. Ct. App. 1988)).

10 91. Defendant conducted an unfounded and investigation against Plaintiff for
11 claims made by other employee(s) who held adverse beliefs and motivated by Plaintiff’s
12 sexual orientation as a member of the LGBTQ community.

13 92. Throughout the course of conducting an improper investigation outside the
14 protocol of the School’s policy handbook, Defendant disclosed personal information
15 about Plaintiff.

16 93. Defendant disclosed Plaintiff’s personal information and allowed the false
17 accusations to spread and become gossip for other employees.

18 94. Throughout the course of the investigation Defendant showed bias towards
19 Plaintiff, attacked Plaintiff’s character, blamed Plaintiff for other employees knowing
20 about the improper investigation, and pressured a therapist Plaintiff was speaking to reveal
21 protected information about Plaintiff.

22 95. When the allegations against Plaintiff were determined unfounded and the
23 investigation was closed, Plaintiff’s reputation and good name was harmed in the process.

24 96. Defendant contacted a counselor which Plaintiff was speaking about these
25 matters with.

26 97. Defendant pressed the counselor about conversations she had with employee.

1 98. Defendant also attempted to pressure the counselor into revealing protected
2 information about Plaintiff.

3 99. Defendant proceeded to speak ill of Plaintiff to the counselor and showed
4 personal bias against Plaintiff.

5 100. The counselor was shocked by Defendant's behavior, and had to state that in
6 her professional capacity she will not be speaking about the nature of the conversation she
7 had with Plaintiff.

8 101. Defendant's statements reflect adversely on Plaintiff's conduct in a business
9 or profession and is therefore considered defamation "per se." *McClinton v. Rice*, 76
10 Ariz. 358, 365, 265 P.2d 425, 429-30 (1953); see, e.g., *Vacca v. Gen. Elec. Credit Corp.*,
11 88 A.D.2d 740, 451 N.Y.S.2d 869, 870 (Ariz. Ct. App. 1982) (statements by defendant
12 creditor that plaintiffs "are crooks and hijackers and you are going to find a lot of your
13 units missing, and if you leave your merchandise here and don't entrust it to [defendant]
14 for safe-keeping, you will find more will be missing" made in plaintiffs' place of business
15 clearly slander per se in context), and thus would be actionable without a need to plead
16 special damages or malice.)

17 102. Because Defendant's statements are defamation per se, Plaintiff is entitled to
18 special damages without any need to prove that it was financially harmed by Defendant's
19 statements. *Kinsey v. Real Detective Pub. Co.*, 52 Ariz. 353, 358, 80 P.2d 964, 967 (1938)
20 (As to libel per se, "the law presumes its falsity and that it was published with malicious
21 intent.").

22 **COUNT FIVE – INTENTIONAL INFLICTION OF EMOTIONAL**
23 **DISTRESS (ALL DEFENDANTS)**

24 103. Plaintiff hereby incorporates by reference all Paragraphs above as though
25 fully set forth herein.

26 104. Plaintiff was subjected to unfounded accusations at work.

1 105. Plaintiff believes these accusations stemmed from discriminatory beliefs
2 about her sexual orientation held by other employees and the Superintendent.

3 106. Information about Plaintiff, including personal private matters, along with
4 the unfounded accusations became known by other employees throughout the course of
5 the investigation.

6 107. Defendant blamed Plaintiff for the fact that information about Plaintiff
7 became known and the subject of gossip at the workplace.

8 108. Plaintiff was hurt embarrassed and deeply distressed about the unfounded
9 accusations, the unwarranted investigation, and that personal information became the
10 subject of the workplace.

11 109. Plaintiff believes Defendant's ongoing harassment and retaliation continued
12 after the investigation was closed.

13 110. Defendant retaliated against Plaintiff by changing the structure of her pay,
14 not allowing her inside the building, and having her monitored and scrutinized throughout
15 the work day.

16 111. Plaintiff was alerted to the fact that Defendant attempted to reach out to a
17 school counselor in an attempt to pry confidential information and conversations from the
18 counselor.

19 112. Plaintiff also learned that Defendant made hurtful and disparaging comments
20 about Plaintiff to the counselor.

21 113. Plaintiff was eventually told that there was not enough work for her in the
22 upcoming school year and was terminated.

23 114. However Plaintiff learned the expected number of students needing bus
24 services was set to increase in the upcoming school year.

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115. Plaintiff has suffered extreme distress from her treatment at the hands of Defendant and has sought ongoing physical and mental care to cope with the harassment, discrimination, and treatment at the hands of Defendant.

116. The wrongful acts of Defendant were so outrageous in character, so shocking in nature, so extreme in degree, as to go beyond all bounds of decency, and to be regarded as atrocious and utterly intolerable.²

117. Defendant's acts were intended to cause Plaintiff severe emotional distress or carried out in reckless disregard of the near certainty that such a distress would result from the wrongful acts,³ and as a direct and proximate result of said acts, Plaintiff has suffered extreme emotional distress.⁴

118. As a direct and proximate result of Defendant's purposeful retaliation, harassment and treatment of Plaintiff, Plaintiff has suffered from extreme emotional distress, physical illness, medical expenses, loss of pay, legal fees and etc.

DAMAGES

WHEREFORE, Plaintiff DESARAE MARTIN prays for judgement against Defendant(s), Prescott Valley Charter School, National PEO Payroll Management Company LLC, and Vensure Employer Services, Inc., follows:

² *Ford v. Revlon, Inc.*, 153 Ariz. 38, 43, 734 P.2d 580, 585 (1987).

³ *See, e.g., Continental Life & Acc. Co. v. Songer*, 124 Ariz. 294, 603 P.2d 921 (App.1979); *Rosales v. City of Eloy*, 122 Ariz. 134, 593 P.2d 688 (App.1979); *see also Watts v. Golden Age Nursing Home*, 127 Ariz. 255, 619 P.2d 1032 (1980); *accord Stewart v. Thomas*, 538 F.Supp. 891 (D.D.C.1982).

⁴ *See also* Restatement (Second) of Torts § 46(1) (1965). *comment b*: "...[w]here the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community ... in which ... an average member of the community would ... exclaim, 'Outrageous!'"

119. As a direct and proximate result of Defendant's violations of Plaintiff's protected rights in each of the above-mentioned claims for relief, Plaintiff suffered and continues to suffer from emotional distress, physical illness, medical expenses, loss of pay, legal fees and etc. Plaintiff is entitled to compensatory damages to make her whole.

120. Alternatively, payment to Plaintiff, of an amount to be determined at trial, or a different amount which may result during the proceedings, for direct and consequential damages as a result of Defendant's defamation.

121. In addition, payment to Plaintiff of an amount to be determined at trial, or a different amount which may result during the proceedings, for punitive damages as a result of Defendant's illegitimate conduct.

122. In addition, special damages to Plaintiff in the amount determined by the court as special damages for Defendant's defamation per se against Plaintiff.

123. In addition, payment to Plaintiff for any other damages which may result during the proceedings.

124. Reasonable attorney's fees and costs pursuant to A.R.S. § 44-404 and/or A.R.S. 12-341.01; and

125. Costs of suit pursuant to A.R.S. 12-341 and such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

126. Plaintiff hereby demands a trial by jury as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

DATED this 22th day of June 2022.

Law Office of Joshua Black, PLC

/s/Joshua C. Black

By: _____.

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